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New overtime rules lessen labor's rewards

Earning a living wage has just become more difficult for many American workers. Two weeks before Labor Day, the administration put into place new regulations that may eliminate overtime pay eligibility for as many as 6 million people. Although Maine state officials are taking steps to preserve those rights for Maine workers, other Americans are not so fortunate. Congress should override these misguided changes.

"Time-and-a-half" pay requirements were instituted during the Great Depression as a way to discourage employers from overworking their employees and to encourage businesses instead to hire additional workers. These goals are equally important today, when well-paying, secure jobs are hard to find, wages are stagnant, and many other workers and their families are stressed by the demands of long workweeks.

Under the Fair Labor Standards Act (FLSA), most U.S. workers are guaranteed overtime pay for every hour worked beyond the normal 40-hour workweek. About 85 percent of the nation's work force — 115 million people — are covered under these protections. Employees who earn less than an amount set by law are entitled to overtime pay. The new U.S. Department of Labor regulations raise this figure from \$155 to \$455 a week. The increase is long overdue, but it is still too low — only \$5,000 a year above the poverty level for a family of four.

The more problematic changes are those that pertain to workers who earn more than \$455 a week. Employees are exempt from overtime pay if they receive a set salary rather than an hourly wage, and primarily perform duties that are "professional," "exec-

utive" or "administrative" in nature. The "duties" test of the overtime rule has been significantly loosened, giving employers wide latitude in reclassifying employees as managerial and therefore exempt from overtime eligibility. This expanded ability to figuratively change workers' collars from blue to white, moreover, creates a financial incentive; employers can switch these workers from hourly to salaried status so that they will not receive overtime compensation. One law firm summarized the advantage of the new rule for its business clients: "Thankfully, virtually all of these changes should ultimately be beneficial to employers."

Under the new rules, employees are the losers. A factory "foreman" who spends his entire day doing manual work now will lose his overtime pay if

he simultaneously "manages" the team of employees working alongside him on the line. Likewise, an assistant manager at Burger King who spends 90 percent of her time running the cash register and serving customers at Burger King and who has no authority to hire or fire subordinates can be classified as an exempt executive and denied overtime pay. Tens of thousands of pre-kindergarten and nursery school teachers, mortgage loan officers, paralegals, EMT workers, cooks, bookkeepers, computer employees and others will lose their right to overtime pay. Indeed, if switched to salaried status, they won't even receive any additional pay for their overtime hours.

For American families who received overtime pay in 2000, overtime earnings accounted for about

25 percent of their income, or about \$8,400 a year. For many, this income has made it possible to make ends meet. Now, many of these workers will be working at least as long, but earning less, at a time when they are already being squeezed by a decline in real wage growth.

The rule overhaul favors business interests concerned about being sued by workers illegally deprived of overtime pay. Multimillion-dollar verdicts or settlements have recently been lodged against Wal-Mart, Rite Aid, Bank of America, Radio Shack and Farmers Insurance Exchange, among others, for unpaid overtime. Proponents of the change argued that the old rules, particularly the unclear duties test, invited litigation. Former FLSA administrators, however, predict that the new rules will cause even more disputes because they are vague, ambiguous and internally inconsistent.

After the Department of Labor first proposed these changes (without holding a single public hearing), bipartisan majorities in both the House and Senate voted to block them. But when it came time for a final vote on the spending bill that contained this provision, a presidential veto threat led Republican leaders to drop the effort to repeal the new rules. Congress can still vote to override these regulations, but in the House, the leadership continues to resist Democratic efforts to hold a vote on this issue.

I will continue to work with my colleagues to change the new rules. Overtime pay is a fundamental labor protection that American workers have long depended upon, and which must be preserved.

Tom Allen is Maine's 1st District congressman.



OP ART BY M. RYDER